

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

AERITAS, LLC,

Plaintiff

v.

BURGER KING CORPORATION

Defendant

Case No. 6:20-cv-01066

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Aeritas, LLC (“Aeritas” or “Plaintiff”) files this Complaint for patent infringement against Burger King Corporation. (“BK” or “Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under 35 U.S.C. § 1 et seq.

PARTIES

2. Aeritas is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

3. Upon information and belief, BK is a corporation organized under the laws of the State of Delaware, with a place of business at 1210 North Valley Mills Dr., Waco, Texas 76710.

JURISDICTION AND VENUE

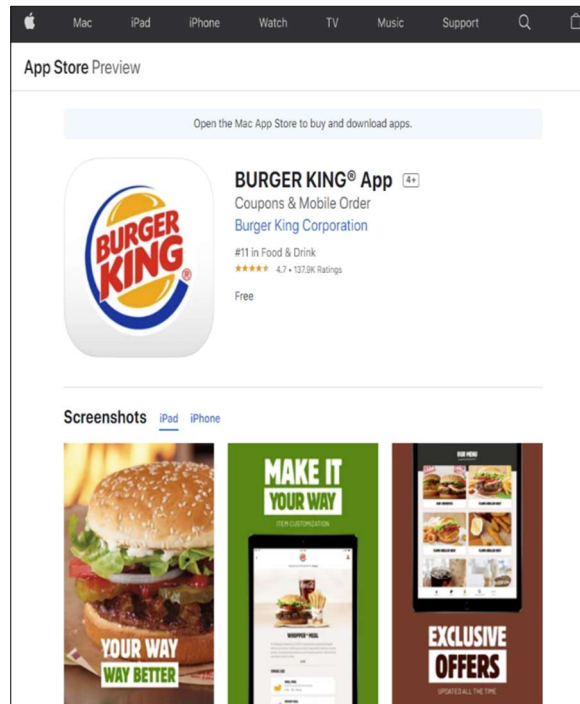
4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendant is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

6. Venue is proper in this District under 28 U.S.C. § 1400 because Defendant has committed acts of infringement and has regular and established places of business in this judicial district.

OVERVIEW OF THE BURGER KING APP

7. Defendant provides for its customers use the Burger King App, which is available for use with iOS and Android devices:



Get secret deals and exclusive mobile coupons with the official BURGER KING® app and save like a king! Explore our menu and find your nearest BK® restaurant anytime, anywhere. And in most locations, you can even order ahead.

Specific features include:

- Mobile Coupons: Get VIP access to the hottest mobile-only coupons and secret deals right from your phone.
- Mobile Ordering: For select locations, order with the app and skip the line to enjoy your meal even faster.
- Find Your BK®: Locate your nearest BURGER KING® restaurant and never leave those flame-grilled cravings unfulfilled.
- Menu: Explore your BK® favorites and discover our hottest new menu additions. Plus, you can browse item descriptions and nutritional information at any time.

Compatible with Apple Pay

<https://apps.apple.com/us/app/burger-king-app/id638323895>



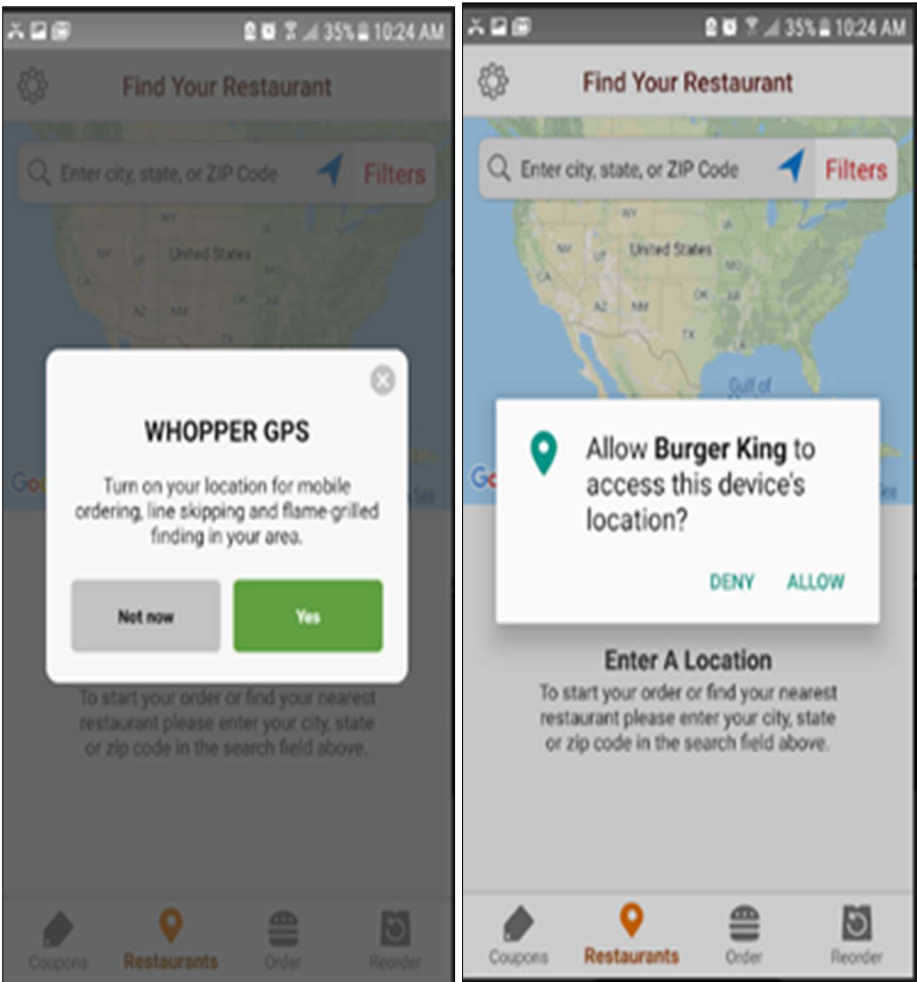
Get secret deals and exclusive mobile coupons with the official BURGER KING® app and save like a king! Explore our menu and find your nearest BK® restaurant anytime, anywhere. And in most locations, you can even order ahead.

Specific features include:

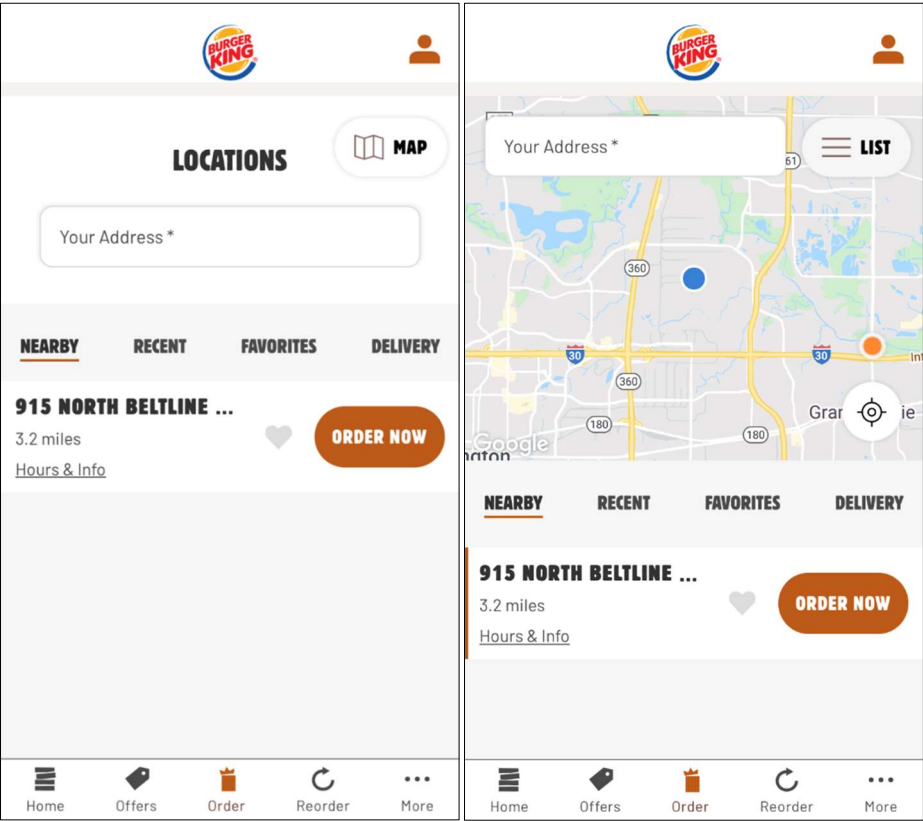
- Mobile Coupons: Get VIP access to the hottest mobile-only coupons and secret deals right from your phone.
- Mobile Ordering: For select locations, order with the app and skip the line to enjoy your meal even faster.
- Find Your BK®: Locate your nearest BURGER KING® restaurant and never leave those flame-grilled cravings unfulfilled.
- Menu: Explore your BK® favorites and discover our hottest new menu additions. Plus, you can browse item descriptions and nutritional information at any time.

<https://play.google.com/store/apps/details?id=wb.mobile.cx.client.droid>

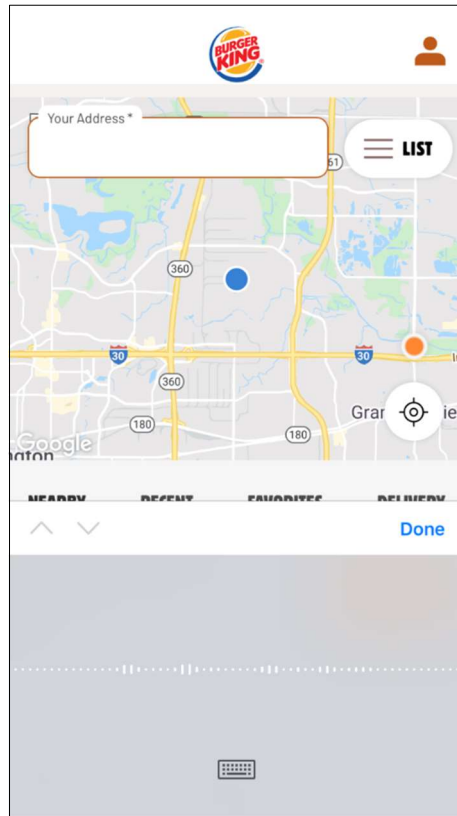
8. The Burger King App uses the location of the user's device in order to identify the user's location and to operate properly.



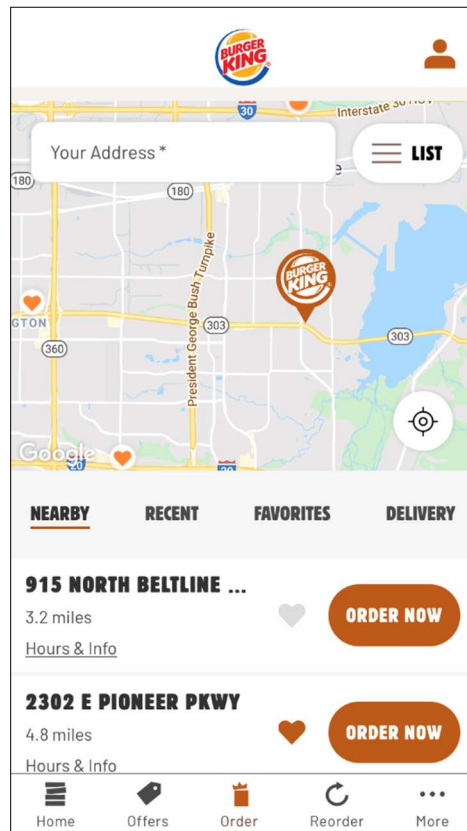
9. The Burger King App and server uses the user’s location to identify nearby Burger King stores.



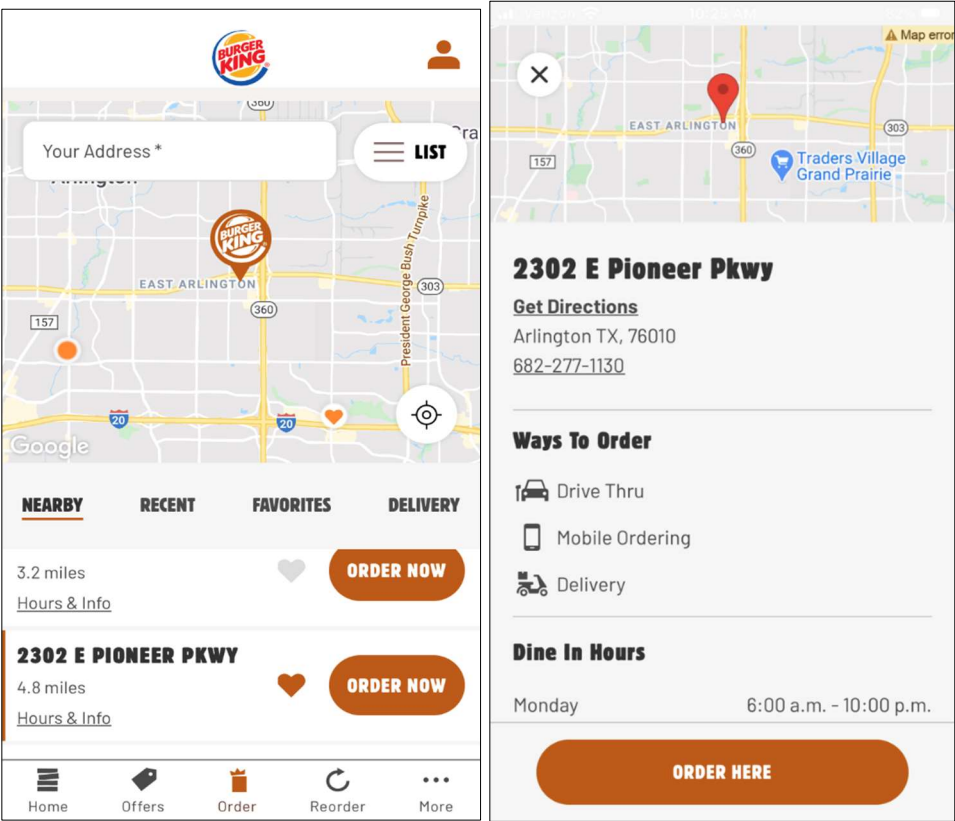
10. The Burger King App uses the user's spoken input as criteria to search for and locate desired Burger King stores.



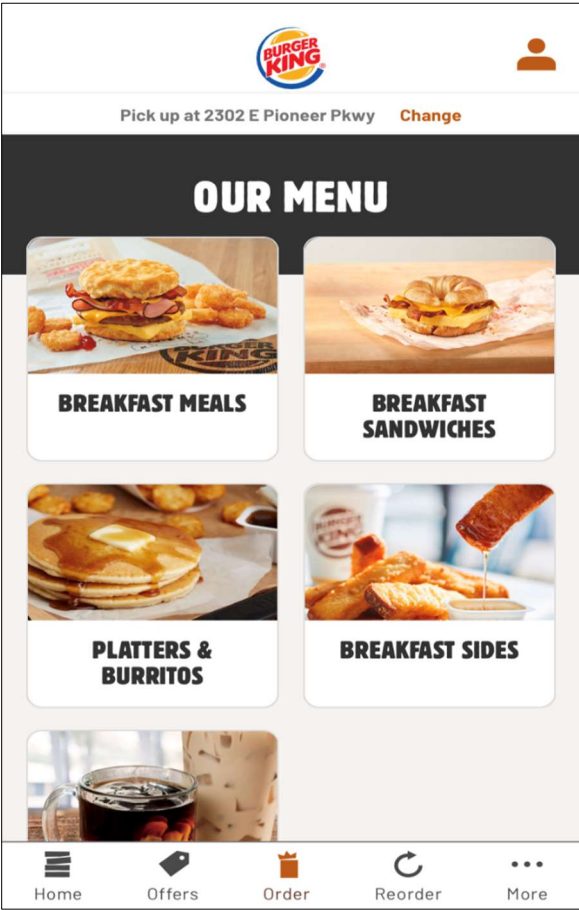
11. The Burger King App uses the user's touch screen input as criteria to search for and locate desired Burger King stores.



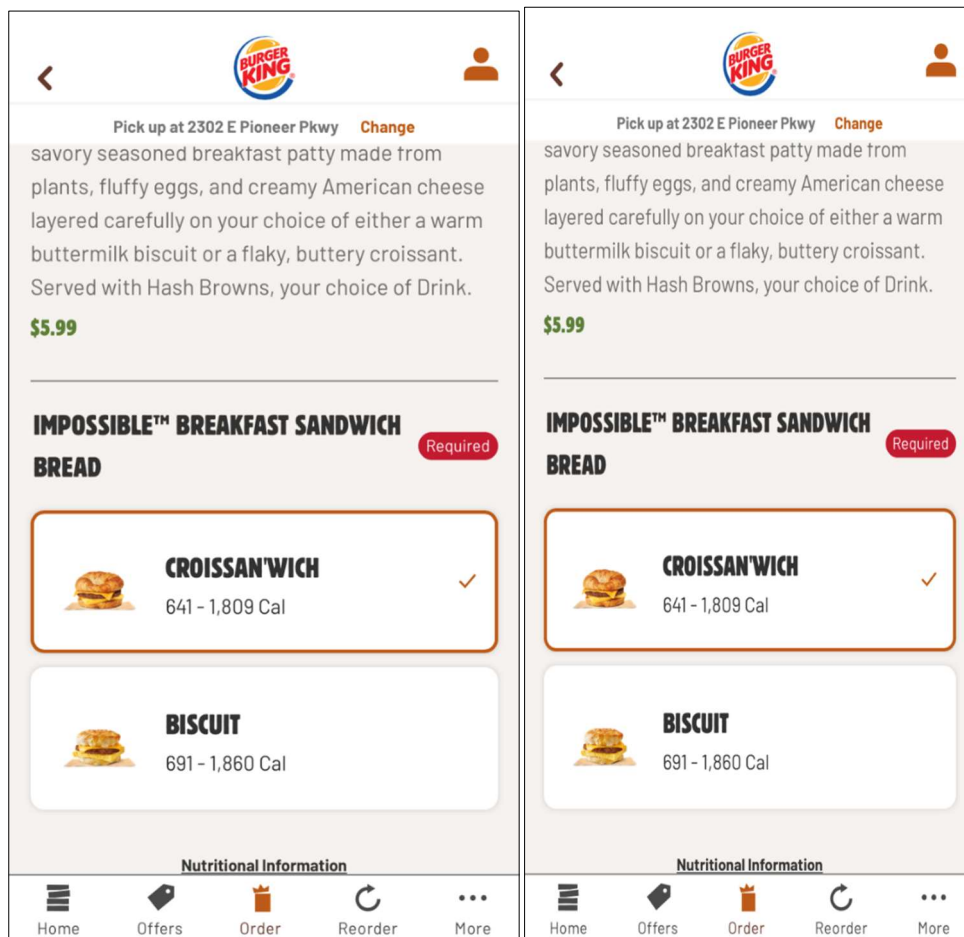
12. The Burger King App allows a user to select a particular location as a favorite location, and the App provides additional details regarding the favorite location.



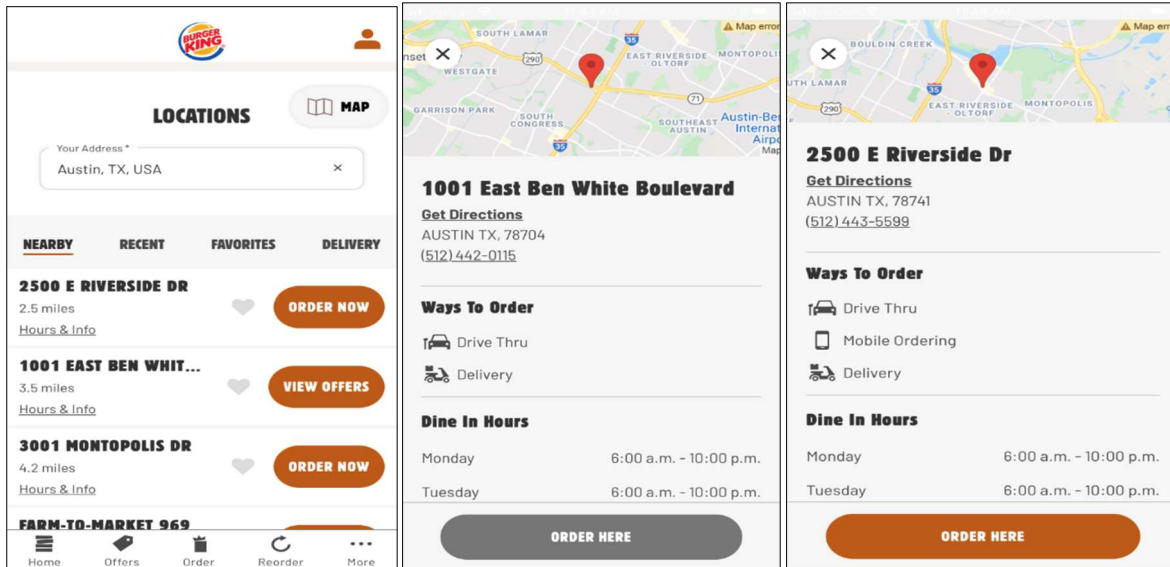
13. The Burger King App and server allow the user to create an order for items at a particular Burger King location.



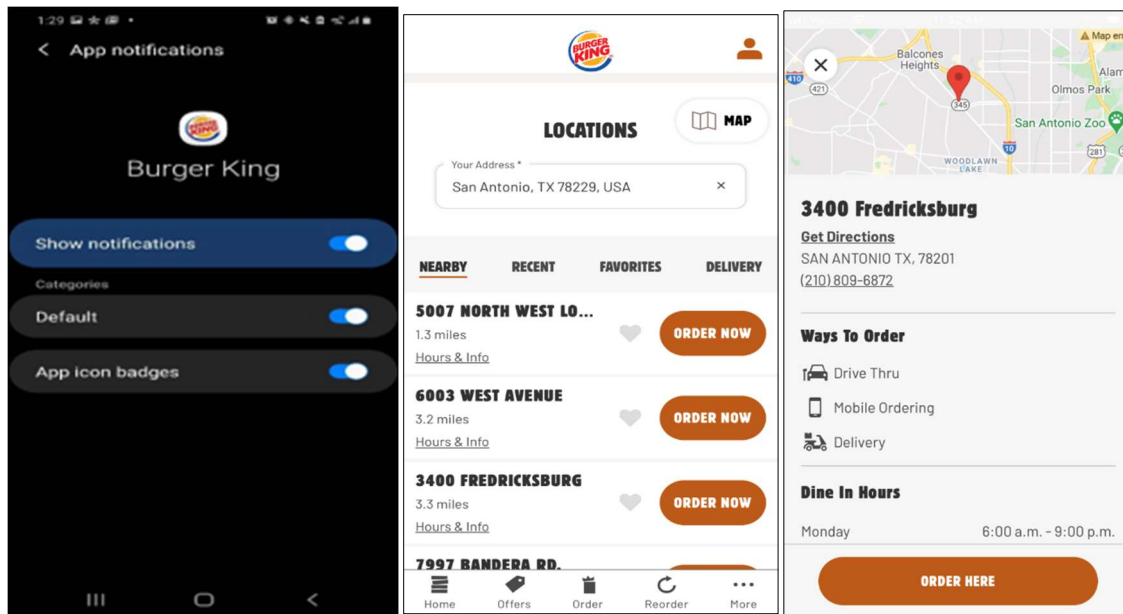
14. When placing an order, the Burger King App provides additional details for a selected item.



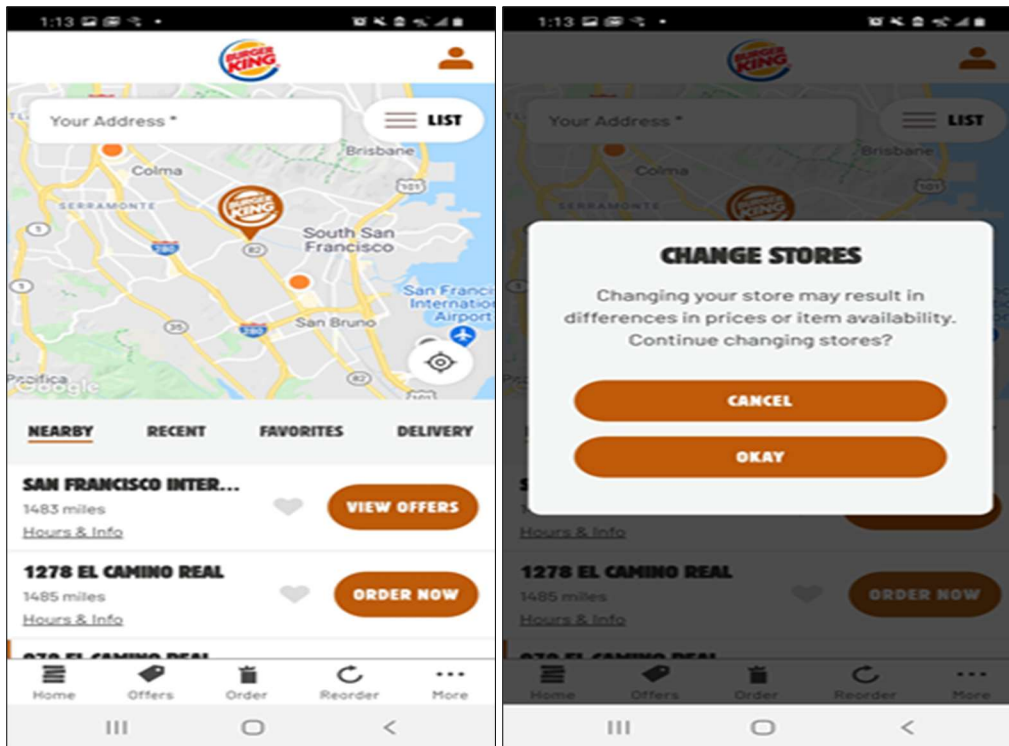
15. Based on the user's location and saved favorites, the Burger King App is able to search for and obtain information related to each, including stores that are currently accepting mobile orders.



16. When the Burger King App is connected to the Burger King server, the App is able to receive notifications from the server, including a non-verbal response to spoken input.



17. The Burger King App includes notification criteria, which is used to determine when notifications are delivered to the user's device, including price changes dependent on different locations.



COUNT I (Infringement of U.S. Patent No. 8,055,285)

18. Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

19. Plaintiff is the owner, by assignment, of U.S. Patent No. 8,055,285 (the “’285 Patent”), entitled MIXED-MODE INTERACTION, which issued on November 8, 2011. A copy of the ’285 Patent is attached as Exhibit PX-285.

20. The ’285 Patent is valid, enforceable, and was duly issued in full compliance with

21. Title 35 of the United States Code.

22. Defendant has been and is now infringing one or more claims of the '285 Patent under 35 U.S.C. § 271 by making and using the Burger King App with users' iOS and Android devices and the Burger King server in the United States without authority.

23. Defendant has also infringed the '285 Patent by encouraging users of the Burger King App to use the user's iOS or Android devices with the Burger King App to practice the claims of the '285 Patent.

24. Claim 1 recites:

1. A method, comprising:

at a first time, receiving and storing an input in a user profile in a database,
the input comprising consumer interest data;

at a second time distinct from the first time, obtaining data identifying a
current location of the mobile communication device;

based on the input stored in the user profile and the current location of the
mobile communication device, initiating a search to locate
information pertinent to the input;

receiving results derived from the search; and

in response to the input and the search, delivering, by a notification server,
information to the mobile communications device.

25. More particularly, Defendant infringes at least claim 1 of the '285 Patent. Defendant receives and stores an input in a user profile in a database, the input comprising consumer interest data. At a second time, data identifying a current location of the mobile communications device on which the Accused Instrumentality is installed is obtained. Based on the input and location, Defendant performs a search to locate pertinent information (e.g., nearby

stores) and receive the results of such search, distance from mobile device. Defendant then provides the information to the mobile communications device.

26. Aeritas has been damaged by Defendant's infringing activities.

COUNT II (Infringement of U.S. Patent No. 9,390,435)

27. Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

28. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,390,435 (the "'435 Patent"), entitled MIXED-MODE INTERACTION, which issued on June 12, 2016. A copy of the '435 Patent is attached as Exhibit PX-435.

29. The '435 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

30. Defendant has been and is now infringing one or more claims of the '435 Patent under 35 U.S.C. § 271 by making and using the Burger King App with users' iOS and Android devices and the servers in the United States without authority.

31. Defendant has also infringed the '435 Patent by encouraging users of the Burger King App to use the user's iOS or Android devices with the Burger King App to practice the claims of the '435 Patent.

32. Claim 1 recites:

1. Apparatus, comprising:

a processor;

computer memory holding computer program instructions to: receive first data indicating a permission to provide a mobile device user a notification, the notification having an associated notification criteria;

at a given time, determine a location of a mobile device;
based at least in part on a determined location of the mobile device and the
notification criteria, to provide to the mobile device the notification,
the notification being associated at the mobile device with one of:
an audible, visual and tactile alert;
receive second data as a result of an input being received at the mobile
device following the notification;
retrieve information associated with the input and the determined location
of the mobile device; and
provide to the mobile device a response to the input, the response based on
the retrieved information.

33. More particularly, Defendant infringes at least claim 1 of the '435 Patent. On information and belief, Defendant employs a processor and computer memory holding computer program instructions to perform the functions described above. Defendant receives data indicating permission to provide a notification to a mobile device user in accordance with notification criteria. At a given time, Defendant determines the location of the mobile device. Based on the location and notification criteria, Defendant provides at least a visual alert notification. Defendant receives second data as a result of an input being received at the mobile device, retrieves information associated with the input and location, and provides responsive information to the mobile device (e.g., store information).

34. Aeritas has been damaged by Defendant's infringing activities.

COUNT III (Infringement of U.S. Patent No. 9,888,107)

35. Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

36. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,888,107 (the “’107

37. Patent”), entitled MIXED-MODE INTERACTION, which issued on February 6, 2018. A copy of the ’107 Patent is attached as Exhibit PX-107.

38. The ’107 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

39. Defendant has been and is now infringing one or more claims of the ’107 Patent under 35 U.S.C. § 271 by making and using the Burger King App with users’ iOS and Android devices and the Burger King servers in the United States without authority.

40. Defendant has also infringed the ’107 Patent by encouraging users of the Burger King App to use the user’s iOS or Android devices with the Burger King App to practice the claims of the ’107 Patent.

41. Claim 5 recites:

5. Apparatus, comprising:

a processor;

computer memory holding computer program instructions to receive first

data indicating a permission to provide a mobile device user a

notification, the notification having an associated notification

criteria;

at a given time, determine a location of a mobile device;

based on at least in part on a determined location of the mobile device and

the notification criteria, to provide to the mobile device the

notification, the notification being associated at the mobile device

with one of: an audible, visual and tactile alert; receive second data

as a result of an input being received at the mobile device following the notification;

retrieve information associated with the input and the determined location of the mobile device; and

provide to the mobile device a response to the input, the response based on the retrieved information; wherein the computer program instructions comprise a rules engine that comprises first and second components, a first component that evaluates the notification criteria, and a second component that executes notification rules.

42. More particularly, Defendant infringes at least claim 5 of the '107 Patent. On information and belief, Defendant employs a processor with computer memory that holds computer program instructions to perform the functions described above. Defendant receives data indicating permission to provide a notification to a mobile device user in accordance with notification criteria. Defendant asks for permission to obtain the user's location and obtains the user's location if permission is granted. Based on the location and notification criteria, Defendant provides at least a visual alert notification. Defendant receives second data as a result of an input being received at the mobile device, retrieves information associated with the input and location, and provides responsive information to the mobile device (e.g., order prices based on store location). Upon user selecting a different store, a visual notification informing the user of different pricing and availability. This notification is evidence of a rules engine that evaluates notification criteria and sends only those notifications that conform to a rule set.

43. Aeritas has been damaged by Defendant's infringing activities.

COUNT IV (Infringement of U.S. Patent No. 7,706,819)

44. Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

45. Plaintiff is the owner, by assignment, of U.S. Patent No. 7,706,819 (the “’819 Patent”), entitled MIXED-MODE INTERACTION, which issued on April 27, 2010. A copy of the ’819 Patent is attached as Exhibit PX-819.

46. The ’819 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

47. Defendant has been and is now infringing one or more claims of the ’819 Patent under 35 U.S.C. § 271 by making and using the Burger King App with users’ iOS and Android devices and the Burger King server in the United States without authority.

48. Defendant has also infringed the ’819 Patent by encouraging users of the Burger King App to use the user’s iOS or Android devices with the Burger King App to practice the claims of the ’819 Patent. Defendant has notice of the ’819 Patent at least as of the date of service of this complaint.

49. Claim 1 recites:

1. A method comprising:

receiving spoken input from a wireless communication device;

obtaining data identifying a current location of the wireless communication device;

based on the current location of the wireless communication device and the spoken input, retrieving information;

delivering, to the wireless communication device by a notification server, a non-verbal response to the spoken input, the nonverbal response

based on the retrieved information and including a drill-down menu by which additional information related to the retrieved information can be obtained; and providing additional information related to the retrieved information in response to receipt of at least one additional input provided via the drill-down menu.

50. More particularly, Defendant infringes at least claim 1 of the '819 Patent. Defendant receives spoken input from a wireless communication device. Defendant obtains data identifying the current location of the mobile device. Based on the location and the spoken input, Defendant retrieves information. Defendant delivers to the wireless device by a notification server, a non-verbal response to the spoken input, the non-verbal response based on the retrieved information and including a scroll-down menu by which additional information related to the retrieved information can be obtained. Defendant provides additional information related to the retrieved information in response to receipt of at least one additional input provided via the scroll-down menu.

51. Aeritas has been damaged by Defendant's infringing activities.

COUNT V (Infringement of U.S. Patent No. 10,362,160)

52. Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

53. Plaintiff is the owner, by assignment, of U.S. Patent No. 10,362,160 (the "160 Patent"), entitled MIXED-MODE INTERACTION, which issued on July 23, 2019. A copy of the '160 Patent is attached as Exhibit PX-160.

54. The '160 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

55. Defendant has been and is now infringing one or more claims of the '160 Patent under 35 U.S.C. § 271 by making and using the Burger King App with users' iOS and Android devices and the Burger King servers in the United States without authority.

56. Defendant has also infringed the '160 Patent by encouraging users of the Burger King App to use the user's iOS or Android devices with the Burger King App to practice the claims of the '160 Patent.

57. Claim 1 recites:

1. Apparatus, comprising:
 - a processor;
 - computer memory holding computer program instructions to:
 - receive first data indicating a permission to provide a mobile device
 - user a notification, the notification having an associated
 - notification criteria;
 - at a given time, receive information identifying a determined
 - location of a mobile device;
 - based at least in part on a determined location of the mobile device
 - and the notification criteria, to provide to the mobile device
 - the notification, the notification being associated at the
 - mobile device with one of: an audible, visual and tactile
 - alert;
 - receive second data as a result of an input being received at the

mobile device following the notification;
retrieve information associated with the input and the determined
location of the mobile device; and
provide to the mobile device a response to the input, the response
based on the retrieved information.

58. More particularly, Defendant infringes at least claim 1 of the '160 Patent. On information and belief, Defendant employs a processor and computer memory holding computer program instructions to perform the functions described above. Defendant receives data indicating permission to provide a notification to a mobile device user in accordance with notification criteria. At a given time, Defendant determines the location of the mobile device. Based on the location and notification criteria, Defendant provides at least a visual alert notification, retrieves information associated with the input and location, and provides responsive information to the mobile device. On information and belief, the program instructions include first and second components of a rules engine to evaluate notification criteria and execute notification rules.

59. Aeritas has been damaged by Defendant's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against

Defendant:

1. declaring that the Defendant has infringed the '285, the '435, the '107, the '819, and the '160 Patents;

2. awarding Plaintiff its damages suffered as a result of Defendant's infringement of the '285, the '435, the '107, the '819, and the '160 Patents;
3. awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and
4. granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: November 19, 2020

Respectfully submitted,

/s/ Raymond W. Mort, III

Raymond W. Mort, III Texas
State Bar No. 00791308
raymort@austinlaw.com

THE MORT LAW FIRM, PLLC
100 Congress Ave, Suite 2000
Austin, Texas 78701
Tel/Fax: (512) 865-7950

ATTORNEYS FOR PLAINTIFF
AERITAS, LLC